



03-01-06

AF  
JFWApplication No. 10/806,790  
Amendment Transmittal Dated February 28, 2006

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/806,790 Confirmation No.: 2374  
Applicant(s): Gary D. Newton  
Filed: 03/23/2004  
TC/A.U.: 3752  
Examiner: Hwu, Davis D.  
Docket No.: 50010.0001  
Customer No: 36178

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

## AMENDMENT TRANSMITTAL

1. Transmitted herewith is
- Amendment Pursuant to 37 C.F.R. §1.116 for this application (10 Pages)
  - Interview Summary dated 2/27/2006
  - Post Card

## STATUS

2. Applicant is
- [X] a small entity. A statement:
- [ ] is attached.

## CERTIFICATION UNDER 37 C.F.R. 1.8(a) and 1.10

I hereby certify that, on the date shown below, this correspondence is being:

## MAILING

- ☐ deposited with the United States Postal Service in an envelope addressed to the Mail Stop Non-Fee Amendment, Commissioner for Patents, Alexandria, P.O. Box 1450, VA 22313-1450.

- ☐ with sufficient postage as first class mail. ☒ as "Express Mail Post Office to Addressee," Mailing Label No. EQ453249405US

## TRANSMISSION

- ☐ transmitted by facsimile to the Patent and Trademark Office.

Date: 2/28/06

Signature

Alla Meyer

(type or print name of person certifying)

- ☒ was already filed.  
☐ other than a small entity.

### EXTENSION OF TERM

NOTE: "Extension of Time in Patent Cases (Supplement Amendments) -- If a timely and complete response has been filed after a Non-Final Office Action, an extension of time is not required to permit filing and/or entry of an additional amendment after expiration of the shortened statutory period.

*If a timely response has been filed after a Final Office Action, an extension of time is required to permit filing and/or entry of a Notice of Appeal or filing and/or entry of an additional amendment after expiration of the shortened statutory period unless the timely-filed response placed the application in condition for allowance. Of course, if a Notice of Appeal has been filed within the shortened statutory period, the period has ceased to run." Notice of December 10, 1985 (1061 O.G. 34-35).*

NOTE: See 37 C.F.R. Section 1.645 for extensions of time in interference proceedings, and 37 C.F.R. Section 1.550(c) for extensions of time in reexamination proceedings.

3. The proceedings herein are for a patent application and the provisions of 37 C.F.R. Section 1.136 apply.

*(complete (a) or (b), as applicable)*

- (a) ☐ Applicant petitions for an extension of time under 37 C.F.R. Section 1.136 (fees: 37 C.F.R. Section 1.17(a)(1)-(4)) for the total number of months checked below:

	Extension (months)	Fee for other than small entity	Fee for small entity
<input type="checkbox"/>	one month	\$ 120.00	\$ 60.00
<input type="checkbox"/>	two months	\$ 450.00	\$ 225.00
<input type="checkbox"/>	three months	\$ 1020.00	\$ 510.00
<input type="checkbox"/>	four months	\$ 1,590.00	\$ 795.00

Fee: \$ 0.00

If an additional extension of time is required, please consider this a petition therefor.

*(check and complete the next item, if applicable)*

- ☐ An extension for \_\_\_\_\_ months has already been secured. The fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ 0.00

OR

- (b) ☐ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently

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overlooked the need for a petition for extension of time.

### FEE FOR CLAIMS

4. The fee for claims (37 C.F.R. Section 1.16(b)-(d)) has been calculated as shown below:

(Col.1)		(Col. 2)		(Col. 3) SMALL ENTITY			OTHER THAN A SMALL ENTITY	
Claims Remaining After Amendment		Highest No. Previously Paid For		Present Extra	Rate	Addit. Fee	OR	Addit. Fee
Total	26	Minus	26	= 0	x \$25 =	\$0.00		x \$50 = \$0.00
Indep.	4	Minus	4	=0	x \$100 =	\$0.00		x \$200 = \$0.00
[ ] First Presentation of Multiple Dependent Claim					+ \$180 =	\$		+ \$360 = \$
Total Addit. Fee						\$0.00	OR	Total Addit. Fee \$0.00

- \* If the entry in Col. 1 is less than the entry in Col. 2, write "O" in Col. 3,  
\*\* If the "Highest No. Previously Paid For" IN THIS SPACE is less than 20, enter "20".  
\*\*\* If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".  
The "Highest No. Previously Paid For" (Total or Indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

**WARNING:** "After final rejection or action (Section 1.113) amendments may be made canceling claims or complying with any requirement of form which has been made." 37 C.F.R. Section 1.116(a) (emphasis added).

(complete (c) or (d), as applicable)

- (c) [x] No additional fee for claims is required.

OR

- (d) [ ] Total additional fee for claims required \$ \_\_\_\_\_.

### FEE PAYMENT

5. [ ] Attached is a check in the sum of \$ \_\_\_\_\_.  
[ ] Charge Account No. \_\_\_\_\_ the sum of \$ 0.00.  
A duplicate of this transmittal is attached.

## FEE DEFICIENCY

*NOTE: If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, (1065 O.G. 31-33).*

6. ☒ If any additional extension and/or fee is required, charge Account No. 502398.

## AND/OR

- ☒ If any additional fee for claims is required, charge Account No. 502398.

Date: 2/28/06

  
SIGNATURE OF PRACTITIONER

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(type or print name of practitioner)  
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**USPTO CUSTOMER NO. 36178**



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**AFTER FINAL AMENDMENT PURSUANT TO 37 CFR § 1.116**

**Sir:**

This amendment is submitted in response to the final office action dated February 13, 2006, which set a shortened statutory period of three months, making any response due by May 13, 2006. This reply is filed within two months of the mailing date of the final action. Therefore, any advisory action not mailed until after the end of the three month shortened statutory period, will extend the shortened statutory period to expire on the date such advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action.

This amendment is necessary because of the new references and arguments contained in the Final Action rejecting claims 1-23. Specifically, the Examiner asserts, that, "Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection."

**CERTIFICATION UNDER 37 C.F.R. 1.8(a) and 1.10**

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**37 C.F.R. 1.8(a)**

**37 C.F.R. 1.10\***

- ☐ with sufficient postage as first class mail.

- ☒ as "Express Mail Post Office to Addressee,"  
Mailing Label No.EQ453249405US

**TRANSMISSION**

- ☐ transmitted by facsimile to the Patent and Trademark Office.

**Signature**

Date: February 28, 2006

*Alla Meyer*  
Alla Meyer

Applicant respectfully traverses the finality of the rejection, in that the prior amendment under 37 CFR § 1.111 added a single, agreed upon element, to each of the three rejected independent claims. The Examiner in the January 3, 2006 interview agreed that the element was present in the allowed claims. Applicant's Attorney believes that making the instant action final was inappropriate for the following reasons:

1. Applicants added nothing to the claims which was not present in one or more of the original claims.
2. Applicants have never had a chance to review the two new references made of record by this action or adequately respond to the §103 rejections of the amended claims over these references. Thus, the final rejection is inappropriate in accordance with the MPEP.
3. The amendments to the claims did not in any way relate to the initial references cited in the instant action; and, therefore, these new references should have and could have been cited in the original action in that they could have been cited against the claims as originally filed.

Applicant's Attorney hereby requests that the finality of this action be withdrawn to allow consideration of Applicant's arguments in respect to the newly cited references.

The Examiner is, therefore, respectfully requested to treat this amendment as if it were filed under 37 CFR §1.111. Entry of this Amendment and reconsideration of the rejections in light of the amendments to the claims presented by Applicant, and arguments contained in this Amendment is respectfully requested. Early and favorable action is further requested.

Examiners courtesy in granting Applicant's Attorney an interview on February 27, 2006 regarding proposed amendments to independent claims 1, 10, and 15 is greatly appreciated. A copy of the Interview Summary is attached hereto. Applicant's Attorney and the Examiner reached an agreement that addition of a limitation in the form of element a. in the allowed claim 24 would overcome the newly cited reference of Buluscheck, and place the application in condition for allowance. By this response, Applicant has made the requested amendments as set forth herein.